

CS FOR SENATE BILL NO. 20(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/21/05

Referred: Judiciary

Sponsor(s): SENATOR DYSON

REPRESENTATIVE Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to offenses against unborn children."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

4 **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the
5 crime of murder of an unborn child if the person

6 (1) with intent to cause the death of an unborn child or of another
7 person, causes the death of an unborn child;

8 (2) with intent to cause serious physical injury to an unborn child or to
9 another person or knowing that the conduct is substantially certain to cause death or
10 serious physical injury to an unborn child or to another person, causes the death of an
11 unborn child;

12 (3) while acting alone or with one or more persons, commits or
13 attempts to commit arson in the first degree, kidnapping, sexual assault in the first
14 degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,
15 sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled
 2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or
 3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in
 4 immediate flight from that crime, any person causes the death of an unborn child;

5 (4) knowingly engages in conduct that results in the death of an unborn
 6 child under circumstances manifesting an extreme indifference to the value of human
 7 life.

8 (b) A person may not be convicted under (a)(3) of this section if the only
 9 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,
 10 and the unborn child killed is the intended victim of the defendant. However, if the
 11 defendant causes the death of another unborn child, the defendant may be convicted
 12 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or
 13 conviction of murder in the first degree or murder in the second degree, murder of an
 14 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

15 (c) Murder of an unborn child is an unclassified felony.

16 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits
 17 the crime of manslaughter of an unborn child if, under circumstances not amounting to
 18 murder of an unborn child, the person

19 (1) intentionally or knowingly causes the death of an unborn child; or

20 (2) recklessly causes the death of an unborn child by means of a
 21 dangerous instrument.

22 (b) Manslaughter of an unborn child is a class A felony.

23 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A
 24 person commits the crime of criminally negligent homicide of an unborn child if, with
 25 criminal negligence, the person causes the death of an unborn child by means of a
 26 dangerous instrument.

27 (b) Criminally negligent homicide of an unborn child is a class B felony.

28 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -
 29 11.41.170 do not apply to acts that

30 (1) cause the death of an unborn child if those acts were committed
 31 during a legal abortion to which the pregnant woman consented or a person authorized

1 by law to act on her behalf consented, or for which such consent is implied by law; or

2 (2) are committed under usual and customary standards of medical
3 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

4 * **Sec. 2.** AS 11.41 is amended by adding new sections to article 2 to read:

5 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A
6 person commits the crime of assault of an unborn child in the first degree if

7 (1) that person recklessly causes serious physical injury to an unborn
8 child by means of a dangerous instrument;

9 (2) with intent to cause serious physical injury to an unborn child or to
10 another person, that person causes serious physical injury to an unborn child;

11 (3) that person knowingly engages in conduct that results in serious
12 physical injury to an unborn child under circumstances manifesting extreme
13 indifference to the value of human life; or

14 (4) that person recklessly causes serious physical injury to an unborn
15 child by repeated assaults using a dangerous instrument, even if each assault
16 individually does not cause serious physical injury.

17 (b) In a prosecution under this section, except for a multiple birth, the birth of
18 a child before 37 weeks gestation with weight at birth of 2,500 grams or less is prima
19 facie evidence of serious physical injury.

20 (c) Assault of an unborn child in the first degree is a class A felony.

21 **Sec. 11.41.282. Assault of an unborn child in the second degree.** (a) A
22 person commits the crime of assault of an unborn child in the second degree if

23 (1) with intent to cause physical injury to an unborn child or to another
24 person, that person causes serious physical injury to an unborn child; or

25 (2) that person recklessly causes serious physical injury to an unborn
26 child by repeated assaults, even if each assault individually does not cause serious
27 physical injury.

28 (b) In a prosecution under this section, except for a multiple birth, the birth of
29 a child before 37 weeks gestation with weight at birth of 2,500 grams or less is prima
30 facie evidence of serious physical injury.

31 (c) Assault of an unborn child in the second degree is a class B felony.

1 **Sec. 11.41.289. Applicability of AS 11.41.280 and 11.41.282.** AS 11.41.280
2 and 11.41.282 do not apply to acts that

3 (1) cause serious physical injury or physical injury to an unborn child
4 if those acts were committed during a legal abortion to which the pregnant woman
5 consented or a person authorized by law to act on her behalf consented, or for which
6 consent is implied by law; or

7 (2) are committed under usual and customary standards of medical
8 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

9 * **Sec. 3.** AS 11.81.250(a) is amended to read:

10 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
11 title, except murder in the first and second degree, attempted murder in the first
12 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
13 in the first degree, **murder of an unborn child**, sexual assault in the first degree,
14 sexual abuse of a minor in the first degree, misconduct involving a controlled
15 substance in the first degree, and kidnapping, are classified on the basis of their
16 seriousness, according to the type of injury characteristically caused or risked by
17 commission of the offense and the culpability of the offender. Except for murder in
18 the first and second degree, attempted murder in the first degree, solicitation to
19 commit murder in the first degree, conspiracy to commit murder in the first degree,
20 **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor
21 in the first degree, misconduct involving a controlled substance in the first degree, and
22 kidnapping, the offenses in this title are classified into the following categories:

23 (1) class A felonies, which characteristically involve conduct resulting
24 in serious physical injury or a substantial risk of serious physical injury to a person;

25 (2) class B felonies, which characteristically involve conduct resulting
26 in less severe violence against a person than class A felonies, aggravated offenses
27 against property interests, or aggravated offenses against public administration or
28 order;

29 (3) class C felonies, which characteristically involve conduct serious
30 enough to deserve felony classification but not serious enough to be classified as A or
31 B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

* **Sec. 4.** AS 11.81.250(b) is amended to read:

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

* **Sec. 5.** AS 11.81.900(b) is amended by adding a new paragraph to read:

(64) "unborn child" means a member of the species Homo sapiens, at any stage of development, who is carried in the womb.

* **Sec. 6.** AS 12.55.035(b) is amended to read:

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$500,000 for murder in the first or second degree, attempted murder in the first degree, **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

- (3) \$100,000 for a class B felony;
- (4) \$50,000 for a class C felony;
- (5) \$10,000 for a class A misdemeanor;
- (6) \$2,000 for a class B misdemeanor;
- (7) \$500 for a violation.

* **Sec. 7.** AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

* **Sec. 8.** AS 12.55.125(b) is amended to read:

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be

1 sentenced to a definite term of imprisonment of at least five years but not more than
2 99 years. A defendant convicted of murder in the second degree **or murder of an**
3 **unborn child under AS 11.41.150(a)(2) - (4)** shall be sentenced to a definite term of
4 imprisonment of at least 10 years but not more than 99 years. A defendant convicted
5 of murder in the second degree shall be sentenced to a definite term of imprisonment
6 of at least 20 years but not more than 99 years when the defendant is convicted of the
7 murder of a child under 16 years of age and the court finds by clear and convincing
8 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a
9 legal guardian, or a person occupying a position of authority in relation to the child; or
10 (2) caused the death of the child by committing a crime against a person under
11 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of
12 authority" have the meanings given in AS 11.41.470.